



## **Bureau of Land Management LANDS & REALTY Publications**

# **OBTAINING A RIGHT-OF-WAY ON PUBLIC LANDS**

## **Bureau of Land Management Right-Of-Way Program**

Each year, thousands of individuals and companies apply to the Bureau of Land Management (BLM) to obtain a right-of-way (ROW) on public lands. A ROW grant is an authorization to use a specific piece of public land for a certain project, such as roads, pipelines, transmission lines, and communication sites. The grant authorizes rights and privileges for a specific use of the land for a specific period of time. Generally, a BLM ROW is granted for a term commensurate with the life of the project. Typically, grants are issued with 30-year terms, and most can be renewed.

The BLM places a high priority on working with applicants on proposed ROW to provide for the protection of resource values and to process the application expeditiously. This brochure is designed to acquaint you with this process. A more complete explanation of the BLM ROW program is found in Title 43 of the Code of Federal Regulations, Parts 2800 and 2880. Copies of these regulations are available at all BLM offices. The BLM has also initiated efforts to streamline the application processing procedures (see Instruction Memorandum No. 96-27 and Instruction Memorandum No. 97-18)

Careful advance planning with BLM personnel who will be handling your application is the key to success. If they know about your plans early, they can work with you to tailor your project to avoid many problems and costly delays later on in the process.

If you are not familiar with local BLM jurisdictions, the best place to start is by contacting a BLM State Office listed in the back of this brochure. Each State Office oversees a number of Districts, which in turn oversee Resource Areas. Depending on your project, you may be working primarily with personnel at a BLM District Office or, more likely, at a BLM Area Office.

## **WHEN YOU DO--AND WHEN YOU DON'T--NEED A R/W**

As a general rule, you **do** need a ROW whenever you wish to build a project on the public lands. Some examples of land uses which require a ROW grant include: transmission lines, communication sites, roads, highways, trails, telephone lines, canals, flumes, pipelines, reservoirs, etc.

You **don't** need a ROW for so-called "casual use." What kinds of activities are considered "casual use"? Examples include driving vehicles over existing roads, sampling, surveying, marking routes, collecting data to prepare an application for a ROW, and performing certain activities that do not cause any appreciable disturbance or damage to the public lands, resources or improvements.

Depending on the specifics of your proposed activity, uses on the public lands can be either casual use or a use requiring a grant. It's a good idea to contact the BLM and discuss your plans before assuming your use is casual. The BLM can then make a judgment on the requirements in your particular case.

## **STEPS IN APPLYING FOR A ROW**

1. Contact the BLM office with management responsibility for the land where the ROW is needed.
2. Arrange a preapplication meeting with the Field Office Manager or appropriate staff member. Jointly review the application requirements and form to determine what information is needed,.

If you call ahead to set up the meeting, it can often be arranged and held at the site of your proposed use.

3. When you have all the information, bring or mail the application, along with the nonrefundable application processing fee, to the appropriate BLM office.

## **PREAPPLICATION MEETING**

The preapplication meeting provides the opportunity for you to fully discuss and describe your proposal in detail and provides an opportunity for BLM to fully explain processing requirements. The preapplication meeting will also cover fees, safety, work schedules, and other items. This meeting has the

potential for saving both you and the BLM time and expense. For example, in FLPMA, Congress directed that ROW in common shall be required, to the extent practical, in order to minimize adverse environmental impacts and the proliferation of separate ROW. This is accomplished through a system of designated ROW corridors and co-locating communication uses on existing towers and within multi occupancy buildings when feasible. During the preapplication meeting, the staff may examine the proposed ROW to see if it would fit in an existing corridor or in an existing communication facility.

The BLM wants to make the application process as easy as possible. Accordingly, the application form requests a minimum amount of information. (A copy of the application follows the itemized instructions for filling out the application) Even so, incomplete information is often the reason application periods are unnecessarily prolonged.

To avoid problems, you should review the form prior to your preapplication meeting and, if possible, fill it out before or during the preapplication meeting with the BLM. Be sure to bring any information that may be useful during this session. For example, Item 8 requests a map of the project area. You may already have a survey or other adequate map that will satisfy this requirement and provide additional information in processing your application.

## **COMPLETING THE APPLICATION FORM**

Directions for completing the application are included on the form; however, the following supplemental instructions may also assist you. Incomplete information is often the reason application periods are unnecessarily delayed.

Item 6--This applies only to oil and gas pipelines, applicants must be citizens of the United States. Citizenship is required of all partners in a partnership. Aliens may own or control stock in corporations if the laws of their countries do not deny similar privileges to citizens of the United States.

Item 7--Requires addressing all the details of what you need and how you plan to accomplish it. Be as specific as possible in describing the project, its location, and dimensions. Include the legal description of the affected public land. Attach separate sheets as necessary, since the space in this block is limited. You may wish to follow the Plan of Development (POD) outline (following the application form) to complete this section. This outline should help you thoroughly describe your project and its associated impacts. You should also describe and apply for a Temporary Use Permit for any extra construction width you may need.

Item 8--Attach a map (BLM intermediate scale map, 1:100,000; U.S. Geological Survey quadrangle; aerial photo; or equivalent) showing the approximate location of the proposed ROW and facilities on public land and existing improvements adjacent to the proposal. Only improvements that may directly affect the proposal need to be shown on the map. Include the township, range, section, and a north arrow.

Item 9--It is not mandatory to submit documentation of other approvals at the time of application. However, the authorized officer may require other agency approvals prior to processing.

Item 10--The "initial cost reimbursement payment" is discussed in the Costs and fees section. You will be notified by formal decision letter of the fee category determination for your application.

Item 12--If you have no doubts about your capacity to complete the project, write in "[I am/We are] technically and financially capable of completing the project described in this application." The BLM Authorized Officer may require that you post a performance bond or that you hire a registered engineer, depending upon the scope and complexity of your project.

Item 13-18--It is generally not necessary to complete these items. However, if you have made studies that concern these questions, the information should be submitted to accelerate the processing of the application.

Item 19--It is mandatory to provide information related to the use or transportation of any hazardous materials. Simply writing in "N/A" in this block is not satisfactory.

Supplemental--The supplemental page is to be completed only when the application is for an oil and gas pipeline. In such cases, fill in only I(g) and either I(e) or III(c). If this information has been previously submitted with another BLM ROW application or grant, provide office and file identification numbers.

Signature block--If someone is acting as your authorized agent and you want them to sign the application

or grant on your behalf, a resolution to that effect must be filed with application.

To sum up, the application form is considered complete when information has been provided for the following items:

Required - Items 1, 3, 4, 5, 7, 8, 10, 12, signature, and date.

Required if applicable - Items 2, 6, 11, 19, and supplemental page.

Optional - Item 9, 13, 14, 15, 16, 17, and 18.

A base application consists of a completed application form (Standard Form 299), map, and the nonrefundable cost reimbursement processing payment.

## COSTS

There are three different charges involved for a ROW grant:

**Processing Fees associated with your application-** The first charge will reimburse the United States in advance for the expected administrative and other costs incurred in processing the application. Processing fees must be paid when the written application is submitted. The BLM will use the information presented during the preapplication meeting to estimate the application processing fee. The BLM will first designate the project as either major or minor. Fees for minor category projects are charged according to a schedule available at BLM offices. Costs for major category projects depend on whether the project is one authorized under FLPMA or under the Mineral Leasing Act. Major category projects applied for under the authority of FLPMA require the payment of *reasonable* processing costs for ROW. The *actual* processing costs will be required for ROW applied for under the authority of the Mineral Leasing Act.

**Monitoring fee** -- The second charge is a one-time nonrefundable fee to reimburse the United States for the cost of monitoring compliance with the terms and conditions of the ROW grant, including requirements for protection and rehabilitation of the lands involved. The BLM will monitor your construction, operation, and maintenance of the ROW and, when the time comes, the shutdown of your activities and the termination of the ROW grant. The amount of this fee is also determined according to a schedule available at BLM offices. Again, if the estimated monitoring costs exceed a certain amount, the applicant will be required to reimburse the United States for the actual monitoring costs.

**Rental** -- The third charge is the annual rental. It is payable before the grant is issued and is based on the fair market rental value for the rights authorized. The rental for *linear and communication sites* on public lands is usually established via two separate administrative schedule (see Linear Schedule or Communication Uses Schedule). These schedules, which are based roughly on land values in the project area, are adjusted annually by an economic index. In some cases, the rental is established by an appraisal.

No application, monitoring, or rental is required for:

- State or local agencies or instrumentalities thereof (except municipal utilities and cooperatives whose principal source of revenue is customer charges) where the land will be used for governmental purposes and the land resources will continue to serve the public interest.
- Road use agreements or reciprocal road agreements.
- Federal agencies.

Other exemptions, waivers, or reductions in the application and/or rental may apply and can be explained by BLM officials during the preapplication meeting.

## REMEMBER TO PLAN AHEAD

You should arrange for your preapplication meeting well in advance of when you would like to start work on the project. Processing time for an average grant is 60 to 90 days. However, grants for complex projects can take much longer. Try to contact the BLM as soon as possible. The Area Manager and staff are ready to provide information, advice, and assistance to help you prepare an application.

You must use a [STANDARD FORM 299](#) to file an application.

## TEMPORARY USE PERMIT (TUP)

Keep in mind that all activities associated with the construction, operation and termination of you ROW must be within the specified limits of the authorization. Item 7 on the ROW application is where you would identify your need for the use of additional land during the construction phase of your project. This additional land maybe necessary for construction, stock piling of excess materials, equipment parking, etc. If additional land is required during construction, you will need to apply for a TUP. This TUP can be granted for up to 3 years; granting a term of this length generally allows the holder of the ROW adequate time to any stipulated requirements for restoration of disturbed land. TUP needs should be discussed during the preapplication meeting.

You can apply for a TUP at the same time as you apply for a ROW by describing its dimensions, locations, and term needed in item 7 of the standard ROW application (SF-299), or by describing it in your Plan of Development. You may also apply for a TUP after your ROW has been granted; in this case, you would use a separate SF-299 form, and would pay additional processing/monitoring fees for BLM to process the TUP. This might require a separate environmental clearance and take additional processing time. The Bottom line: if there is a possibility that you may need extra construction width or space, it is best to identify this in your ROW application.

## **ROW PLAN OF DEVELOPMENT (outline)**

### **1. Description of the Facility** (e.g., road, pipeline, utility line, etc.)

What is to be built?

What will it be used for?

Why is it necessary to use public lands?

When do you propose to construct? Specify duration and timing if known.

How long is the authorization needed?

### **II. Design Criteria**

The degree of design must be compatible with the proposed use and anticipated environmental impacts.

All disturbances must be within the boundary of the ROW.

### **A. Road Specifications**

- Length and width of ROW
- Width of road surface
- Maximum grade of road
- Minimum/maximum clearing width
- Cut/fill slope ratios
- Type and location of drainage structures
- Cattle guards, fences, gates
- Proposed surfacing (gravel) type and quantities
- Dust abatement
- Centerline survey plat
- Design drawings including:
  - Plan and Profile sheets
  - Typical roadway cross-sections
  - Culvert installation details
  - Grade dip detail (water bars, rolling dips, etc.)
  - Cattle guard, fence and gate details
- Construction specifications
- Materials specifications

### **B. Pipeline Specifications**

- Length and width of ROW
- Diameter of pipe and type of material
- Depth of pipeline
- Size if trench

- Construction access requirements during and after construction
- Construction equipment requirements
- Survey plat
- Site specific engineering surveys for critical areas
- Cathodic protection site, valve stations, compressor stations

### **C. Power Line Specifications**

- Length and width of ROW
- Size, number and type of conductors
- Height and size of tower/poles
- Vegetation clearance requirements
- Raptor proof design
- Construction access and equipment requirements
- Transformers, substations, anchor locations, pulling sites
- Marker ball installations

### **D. Communication Site Specifications**

(pertain to non-linear sites)

- Site dimensions
- Size of all structures (building, towers, guys)
- Site design plan
- Utility requirements (power, phone)
- Access requirements during and after construction
- Technical data report including specifications of equipment, frequency of transmissions
- FCC license
- Compatibility with other users

**III. CONSTRUCTION OF THE ROW FACILITY.** Most surface disturbing activities associated with ROW occur during this phase of the project. The following components have been found to be common to most ROW construction projects. These items, where relevant, should be carefully described in the plan of development.

#### **A. Flagging and Staking the ROW.**

- Stake centerline and/or the exterior limits of the ROW
- Construction staking, cut and fill areas, clearing limits

#### **B. Clearing and Grading of the ROW.**

- State how much topsoil will be saved, show where it will be stockpiled and how it will be spread
- Describe disposal of all woody vegetation (trees, stumps and brush) cut on the ROW

#### **C. Earthwork**

- Engineering and quality control
- Excavation and placement of embankment
- Borrow material sources
- Removal of structures and obstructions
- Disposal of unsuitable excavated materials (e.g. oversize rock, weak soils, etc.)
- Soil erosion and water pollution control measures

#### **D. Structure Installation**

Describe how improvements will be constructed ie., constructed on site, prefabricated and delivered to site, concrete cast-in-place, precast concrete, etc.

#### **E. Stabilization, Rehabilitation and Revegetation**

##### **1. Soil replacement and stabilization.** (Explain how soil will be stabilized in the project area).

- Recontouring all disturbed areas to restore original contours
- Placement of waterbars and/or other erosion control structures

## 2. Seeding Specifications

- Seed mixture (certified seed required)
- Rate, method, schedule for seed application
- Application of mulch (straw, burlap, hydromulch) and locations
- Application of fertilizer (type, location, rates)
- Criteria for determining success of revegetation

## IV. OPERATION AND MAINTENANCE OF THE FACILITY

- Describe what maintenance is required and anticipated level of use
- When will scheduled maintenance be performed
- Snow removal
- Pesticide Use Proposal-application to BLM describing plans for controlling noxious weeds

## V. TERMINATION AND ABANDONMENT

- Removal of facilities
- Reclamation of disturbed areas
- Written plan required

## VI. MISC. INFORMATION NEEDS

### A. Waste Disposal

- Trash, construction debris
- Solid waste disposal
- Hazardous waste

### B. Traffic Control Plan

- Barricades
- Construction signs
- Flagpersons

### C. Safety Plan for employees, contractors, general public

### D. Fire Prevention Plan

### E. Spill Prevention and Contingency Plan

- Preventive measures
- Notification of proper authorities
- Incident Response/Containment measures
- Testing and Cleanup measures

### F. Temporary Use Permit (TUP)

- List needs for additional space outside ROW
- Proposed use
- Dimensions
- Specify duration of TUP (include time to rehabilitation site)

## PROCESSING A ROW APPLICATION

Once you have filed an application, the BLM will review it to make sure all necessary information has been included. The application is then evaluated to determine the probable impact of the activity on the social, economic, and physical environments. The BLM will also check to see if the proposed ROW is consistent with the existing land use plan, and will check to see what valid existing rights currently exist on the lands in question.

A ROW application may be denied for any one of the following reasons:

--The proposal is inconsistent with the purpose for which the public lands are managed.

- The proposal would not be in the public interest.
- The applicant is not qualified.
- The proposal is inconsistent with Federal, State, or local laws.
- The applicant is not technically or financially capable of accomplishing the project.
- Serious environmental consequences that cannot be mitigated would result.

A preapplication meeting will reduce the possibility of the application being denied.

## **APPEAL RIGHTS**

If the application is denied, the official written notice will give the reasons for the denial and information on how to file an appeal, should you so desire.

## **LIABILITY**

The holder of a right-of-way grant is responsible for damage or injuries to the United States Government in connection with the holder's use of the ROW.

The holder indemnifies or insures the United States Government harmless for third party liability, damages, or claims arising from the holder's use and occupancy of the ROW.

## **APPLICANT CONTRIBUTIONS TO PROCESSING**

ROW applications are generally processed in the order received, but a thorough, complete application will invariably be put ahead of a deficient, problem-riddled application. ROW applications often compete against other land use applications and other priority workloads. For this reason, applicants may have to wait for extended periods of time for the BLM specialist to complete required inventories. Other points to consider are weather and season of the year. Processing of an application may come to a standstill waiting for a clearance. For example, if you filed an application late in the fall and the BLM archaeologist already had other workloads committed for that year, the archaeologist may not be able to get to your clearance prior to snowfall and the application may be delayed until the next summer.

One option you may wish to consider is contracting with qualified individuals or firms to perform required inventories when the BLM has other competing workloads. The BLM does accept the work of certain qualified individuals and firms that hold permits to do cultural resources and T&E inventories on the public lands. These firms do the field inventory and write reports for BLM approval. This can often significantly reduce the processing time for your application and may also reduce the processing. These items should be discussed with the BLM at the pre-application meeting.

## **YOUR ROW RESPONSIBILITIES**

Once you have a ROW grant, you can proceed with your plans. However, there are a number of responsibilities you should keep in mind. The following questions and answers help explain these responsibilities.

**Q.** How do I handle removal of resources like timber?

**A.** If there are any marketable products (such as timber) that have to be removed before construction can begin, you may be required to purchase them under a separate contract.

**Q.** If I want to substantially change, improve, or add to my project once I have a ROW grant, do I have to get BLM's approval?

**A.** Yes. You must file an application to amend your ROW grant and receive prior written approval from the BLM for any substantial change in location or authorized use during construction, operation, or maintenance of the ROW. Contact the Area Manager to determine if your proposed changes are substantial.

**Q.** Will the BLM inspect my project?

**A.** Yes. The BLM may inspect your project for compliance with the terms and conditions of the grant. In addition, the BLM reserves the right of access onto the public lands covered by the ROW grant and, with reasonable notice to the holder, the right of access and entry to any facility constructed in connection with the project.

**Q.** If the BLM is not satisfied with the way I use my ROW, what can the agency do?

**A.** A ROW holder may use the ROW for only those purposes permitted in the grant. The BLM may suspend or terminate a ROW if the holder does not comply with the applicable laws, regulations, terms, or conditions. The BLM may require an immediate temporary suspension of activities within a ROW to protect the public health and safety or the environment.

**Q.** Can I transfer my ROW?

**A.** Yes, with BLM approval. A transfer of your ROW is called an assignment. You must submit, in writing, the proposed assignment of all or part of a ROW to the BLM, along with a nonrefundable payment of \$50. The assignment to the new owner is not legally recognized by the United States until it has been approved in writing by the BLM. If the new owner is qualified and agrees to be bound by all of the requirements of the ROW grant, the BLM will approve the assignment.

**Q.** Do I need a ROW if I use an existing authorized ROW facility for my communication site use?

**A.** The ROW regulations , 43 CFR Part 2800 et al., published November, 13, 1995, reduced the administrative burden on the communications industry and the government by reducing paperwork, and eliminating the requirement that all communication site users have authorizations; the new regulations require that only building owners have authorizations.

**Q.** How does the BLM calculate rent for communication uses?

**A.** The BLM calculates rent on the number of actual uses in the facility. For a stand alone facility, the base rent is the schedule rent for the facility owner's use for the population served. For multiple use facilities the base rent is the highest schedule rent in the facility for the population served, plus 25% of the schedule rent for all other tenant uses, unless the agency waives or exempts those uses.

**Q.** Do all authorized communication site users pay rent?

**A.** No. Section 2803.1-2(b) (1) lists users who are not required to pay a fair market rent. Basically these users include Federal, State or local government agencies. Rent may be waived or reduced for applicants such as nonprofit organizations or those which provide, without charge, a valuable benefit to the public or to the programs of the Secretary of the Interior. Also, rent may be reduced if the authorized officer determines that the requirement to pay the full rental will cause undue hardship.

**Q.** Will my rental payment likely increase the following year?

**A.** The rental schedule for communication uses is indexed to the Consumer Price Index-Urban. Increases/decreases in the CPI-U are capped at 5 percent. Rental fees can increase or decrease from the previous year depending upon the actual change in the CPI-U and any changes in the number of users of the facility.

The rental schedule for linear ROW's is adjusted annually by multiplying the current rent by the Gross National Product Implicit Price Deflator (IPD), second quarter to second quarter.

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Click [here](#) for a listing of BLM State Offices.



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